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HOUSE BILL 627

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO HEALTH; AMENDING SECTIONS OF THE CAREGIVERS
CRIMINAL HISTORY SCREENING ACT; CLARIFYING DEFINITIONS; ADDING
DISQUALIFYING CONVICTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 29-17-4 NMSA 1978 (being Laws 1998,
Chapter 68, Section 3, as amended) is amended to read:

"29-17-4. DEFINITIONS.--As used in the Caregivers
Criminal History Screening Act:

A. "applicant" means a person who seeks and is
offered employment or contractual service as a caregiver with a
care provider;

B. "caregiver" means a person, not otherwise
required to undergo a nationwide criminal history screening by
the New Mexico Children's and Juvenile Facility Criminal

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1 Records Screening Act, whose employment or contractual service
2 with a care provider includes direct care or routine and
3 unsupervised physical or financial access to any care recipient
4 served by that provider;

5 C. "care provider" or "provider" means a skilled
6 nursing facility; an intermediate care facility; a care
7 facility for the mentally retarded; a general acute care
8 facility; a psychiatric facility; a rehabilitation facility; a
9 home health agency; a homemaker agency; a home for the aged or
10 disabled; a group home; an adult foster care home; a [~~guardian~~
11 ~~service~~] provider of guardianship services pursuant to the
12 Uniform Probate Code; a case management entity that provides
13 services to people with developmental disabilities; a private
14 residence that provides personal care, adult residential care
15 or nursing care for two or more persons not related by blood or
16 marriage to the facility's operator or owner; an adult daycare
17 center; a boarding home; an adult residential care home; a
18 residential service or habilitation service authorized to be
19 reimbursed by medicaid; any licensed or medicaid-certified
20 entity or any program funded by the [~~state agency on~~] aging and
21 long-term services department that provides respite, companion
22 or personal care services; or programs funded by the children,
23 youth and families department that provide homemaker or adult
24 daycare services. "Care provider" or "provider" does not
25 include [~~general acute care hospitals~~] resident care facilities

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1 located at or performing services exclusively for any
2 correctional facility, outpatient treatment facilities,
3 diagnostic and treatment facilities, ambulatory surgical
4 centers and facilities, end-stage renal dialysis and treatment
5 facilities, rural health clinics, private physicians' offices
6 or other clinics that operate in the same manner as private
7 physicians' offices in group practice settings;

8 D. "care recipient" means any person under the care
9 of a provider who has a physical or mental illness, injury or
10 disability or who suffers from any cognitive impairment that
11 restricts or limits the person's activities;

12 E. "conviction" means a plea, judgment or verdict
13 of guilty, a plea of nolo contendere, an Alford plea or any
14 plea or judgment entered in connection with a conditional
15 discharge, a suspended sentence, a diversion or a deferment, in
16 this state or any other state or jurisdiction;

17 [~~E.~~] F. "nationwide criminal history screening"
18 means a criminal history background investigation of an
19 applicant or caregiver through the use of fingerprints
20 collected by the department of public safety and submitted to
21 the federal bureau of investigation, resulting in generation of
22 a nationwide criminal history record for that applicant or
23 caregiver; and

24 [~~F.~~] G. "nationwide criminal history record" means
25 information concerning a person's arrests, indictments or other

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1 formal criminal charges and any dispositions arising therefrom,
2 including convictions, dismissals, acquittals, sentencing and
3 correctional supervision, collected by criminal justice
4 agencies and stored in the computerized databases of the
5 federal bureau of investigation, the national law enforcement
6 telecommunications system, the department of public safety or
7 the repositories of criminal history information of other
8 states."

9 Section 2. Section 29-17-5 NMSA 1978 (being Laws 1998,
10 Chapter 68, Section 4, as amended) is amended to read:

11 "29-17-5. CRIMINAL HISTORY SCREENING REQUIRED--
12 REGULATORY IMPLEMENTATION--APPEALS.--

13 A. The department of health is authorized to
14 receive an applicant's or caregiver's nationwide criminal
15 history record obtained by the department of public safety as a
16 result of a nationwide criminal history screening pursuant to
17 an applicant's or caregiver's authorization for such nationwide
18 criminal history screening. Providers shall submit a set of
19 fingerprints of applicants and caregivers to the department of
20 health for a nationwide criminal history screening, and the
21 department of public safety shall accept from the department of
22 health such fingerprints for the purpose of conducting a
23 nationwide criminal history screening.

24 B. The department of health is authorized to
25 promulgate [~~regulations~~] rules to implement the Caregivers

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1 Criminal History Screening Act, including [~~regulations~~] rules
2 establishing a three-year phased implementation based upon
3 provider type; fingerprint submission procedures; fees;
4 confidentiality; time frames for an applicant's or caregiver's
5 nationwide criminal history screening; procedures for
6 clarifying incomplete or confusing criminal history
7 information; provider sanctions for noncompliance; and
8 employment procedures pending the results of the nationwide
9 criminal history screening relating to applicants and
10 caregivers.

11 C. No caregiver may be employed by a care provider
12 unless the caregiver first has submitted to a request for a
13 nationwide criminal history screening prior to beginning
14 employment in accordance with procedures established by
15 [~~regulation~~] rule by the departments of health and public
16 safety [~~or unless the caregiver has submitted to a nationwide~~
17 ~~criminal history screening and has been cleared within the~~
18 ~~previous twelve months~~].

19 D. The following felony convictions disqualify an
20 applicant or caregiver from employment as a caregiver:

- 21 (1) homicide;
- 22 (2) trafficking controlled substances;
- 23 (3) kidnapping, false imprisonment, aggravated
24 assault or aggravated battery;
- 25 (4) rape, criminal sexual penetration,

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1 criminal sexual contact, incest, indecent exposure or other
2 related sexual offenses;

3 (5) crimes involving adult abuse, neglect or
4 financial exploitation;

5 (6) crimes involving child abuse or neglect;
6 [~~or~~]

7 (7) robbery, larceny, burglary, fraud,
8 extortion, forgery, embezzlement, credit card fraud or
9 receiving stolen property; or

10 (8) an attempt, solicitation or conspiracy
11 involving any of the felonies in this subsection.

12 E. Upon receipt by the department of health of the
13 results of the applicant's or caregiver's nationwide criminal
14 history screening, the department of health shall give notice
15 to the submitting care provider whether [~~or not~~] the applicant
16 or caregiver has a disqualifying conviction of a crime
17 specified in Subsection D of this section. No other results of
18 the applicant's or caregiver's nationwide criminal history
19 screening shall be provided to the care provider. Except as
20 provided in Subsection F of this section, a care provider shall
21 not employ an applicant or continue to employ a caregiver whose
22 nationwide criminal history screening record reflects a
23 disqualifying conviction. When the department of health
24 provides notice to the care provider of a disqualifying
25 conviction of a crime specified in Subsection D of this

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1 section, it shall also notify the applicant or caregiver,
2 stating with specificity the convictions on which its decision
3 is based and identifying the agency that provided the records.

4 F. An applicant or caregiver whose nationwide
5 criminal history record, obtained through the applicant's or
6 caregiver's nationwide criminal history screening and other
7 clarifying endeavors of the department of health, reflects a
8 disqualifying conviction of a crime specified in Subsection D
9 of this section may request from the department of health an
10 administrative reconsideration. The care provider may, in its
11 discretion, continue to employ such person during the pendency
12 of the reconsideration. A care provider may employ the
13 applicant or caregiver if the reconsideration proceeding
14 results in a determination by the department of health that the
15 applicant's or caregiver's nationwide criminal history record
16 inaccurately reflects a disqualifying conviction of a crime
17 specified in Subsection D of this section or that the
18 employment presents no risk of harm to a care recipient or that
19 the conviction does not directly bear upon the applicant's or
20 caregiver's fitness for the employment.

21 G. The department of health is authorized to adopt
22 [~~regulations~~] rules for the administrative reconsideration
23 proceeding available to an applicant or caregiver whose
24 nationwide criminal history record reflects a disqualifying
25 conviction. The [~~regulations~~] rules shall take into account

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1 the requirements of the Criminal Offender Employment Act.

2 H. A care provider shall maintain records
3 evidencing compliance with the requirements of this section
4 with respect to all applicants and caregivers employed on or
5 after May 20, 1998.

6 I. All criminal history records obtained pursuant
7 to this section by the department of health are confidential.
8 No criminal history records obtained pursuant to this section
9 shall be used for any purpose other than determining whether an
10 applicant or caregiver has a criminal conviction that would
11 disqualify ~~[him]~~ the applicant or caregiver from employment as
12 a caregiver. Except on court order or with the written consent
13 of the applicant or caregiver, criminal records obtained
14 pursuant to this section and the information contained therein
15 shall not be released or otherwise disclosed to any other
16 person or agency. A person who discloses confidential records
17 or information in violation of this section is guilty of a
18 misdemeanor and shall be sentenced pursuant to the provisions
19 of Subsection A of Section 31-19-1 NMSA 1978.

20 J. The department of health shall maintain a
21 registry of all applicants who are disqualified from employment
22 or contractual service as caregivers. An applicant's arrest
23 record information shall not be released except upon request of
24 the applicant as provided in the Arrest Record Information Act.

25 K. A care provider, including its administrators

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1 and employees, is not civilly liable to an applicant or a
2 caregiver for a good faith decision to employ, not employ or
3 terminate employment pursuant to the Caregivers Criminal
4 History Screening Act.

5 L. Failure to comply with the requirements of this
6 section are grounds for the state agency having enforcement
7 authority with respect to the care provider to impose
8 appropriate administrative sanctions and penalties."

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